

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6126 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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BECHAR ARJAN & CO.

Versus

ASSISTANT COLLECTOR

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Appearance:

Shri Harin P Raval, Advocate, for the Petitioners.

Shri A.G.Uraizee, Assistant Government Pleader, for Respondents Nos. 1 and 2.

Respondent No. 3 served.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/08/96

ORAL JUDGEMENT

Can a prohibition of sale of agricultural land in

favour of a non-agriculturist apply to a partnership firm consisting of all agriculturists as partners? Will a sale transaction in favour of a partnership firm consisting of such agriculturists as partners be hit by such prohibition against transfer of agricultural lands in favour of non-agriculturists? These questions arise in this petition under Article 227 of the Constitution of India in the context of the challenge to the order passed by the Assistant Collector at Dhrangadhra (respondent No.1 herein) on 3rd September 1983 in Gharkhed Ordinance Case No.61 of 1981-82 as affirmed in appeal by the order passed by the Collector of Surendranagar (respondent No.2 herein) on 24th April 1984 in Gharkhed Ordinance Appeal No.83 of 1984 as further affirmed in revision by and on behalf of the State Government by the order passed on 31st December 1984.

2. The facts giving rise to this petition move in a narrow compass. Petitioner No.1 is a firm (the firm for convenience) and petitioner No.2 is a partner therein. The firm is duly registered under the Indian Partnership Act, 1932. Its members are admittedly all agriculturists. It appears to have purchased one parcel of land bearing survey No.57 (Part) admeasuring 8 acres situated at Pratapgarh (the disputed land for convenience) from one Koli Hari Lavji (the deceased for convenience) by means of one registered Sale Deed executed on 22nd August 1967. Respondent No.3 herein is his heir and legal representative. The necessary mutation entry was also effected in the concerned revenue record. It appears that the sale transaction in favour of the firm came to the notice of the concerned authority. It was found to be in contravention of Section 54 of the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Laws Ordinance Act, 1949 (the Ordinance for brief). Thereupon, a show cause notice came to be issued on 8th July 1983 calling upon the firm to show cause why action should not be taken for breach of Section 54 of the Ordinance qua the transaction in question. The proceeding came to be registered as Gharkhed Ordinance Case No.61 of 1981-82. It appears that the hearing was fixed on 2nd August 1983 and the notice in that regard was received on that very day by the petitioners. It therefore submitted an application to respondent No.1 and also requested for revocation of the show cause notice on certain grounds mentioned therein. Its copy is at Annexure-B to this petition. It appears that thereafter the petitioners filed their reply to the show cause notice some time in August 1983. Its copy is at Annexure-C to this petition. After hearing the petitioners, by his order passed on 3rd September

1983 in the aforesaid proceeding, respondent No.1 declared the sale transaction to be invalid as violative of Section 54 of the Ordinance and the possession of the disputed land was ordered to be restored to the original owner. Its copy is at Annexure-D to this petition. The aggrieved petitioners carried the matter in appeal before respondent No.2. It came to be registered as Gharkhed Ordinance Appeal No.83 of 1984. By his order passed on 24th April 1984 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-E to this petition. The aggrieved petitioners carried the matter in revision before the State Government under Section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief). By the order passed by and on behalf of the State Government on 31st December 1984, the revisional application of the petitioners came to be rejected. Its copy is at Annexure-F to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-D to this petition as affirmed in appeal by the appellate order at Annexure-E to this petition as further affirmed in revision by the State Government by the order at Annexure-F to this petition.

3. Learned Assistant Government Pleader Shri Uraizee has raised a preliminary objection against maintainability of this petition under Article 227 of the Constitution of India. At this stage, learned Advocate Shri Raval for the petitioners prays for treating this petition as also under Article 226 of the Constitution of India. Such oral prayer is accepted and this petition is treated as also under Article 226 of the Constitution of India on payment of the deficit court fees, if any, within 15 days from today.

4. Learned Advocate Shri Raval for the petitioners has submitted that the prohibition contained in Section 54 of the Ordinance will not be applicable in the instant case for the simple reason that all partners of the firm are agriculturists, and as such the transaction in question cannot be said to be in favour of non-agriculturists. As against this, learned Assistant Government Pleader Shri Uraizee for respondents Nos.1 and 2 has submitted that the authorities below have rightly come to the conclusion that a partnership is a "Person" for the purposes of Section 54 of the Ordinance and, since the partnership firm is not registered as an agriculturist, the sale in favour of the partnership firm can be said to be in favour of a non-agriculturist.

5. In order to decide rival contentions urged before me, it would be quite proper to look at certain provisions of the Ordinance. The word "Person" is defined in Section 2 (n) of the Ordinance to mean to include an undivided Hindu family. It is certainly an inclusive definition of wide import. The word "Agriculturist" is defined in Section 2 (c) thereof to mean a person who cultivates the land personally. The relevant provisions contained in Section 54 read as under:

" 54. Transfer to non-agriculturists barred

(1) Save as provided in this Ordinance, -

(a) no sale (including sales in execution

of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land where lease is by law allowed or interest therein, or

(b) no mortgage of any land or interest

therein in which the possession of the mortgaged property is delivered to the mortgagee, or

(c) no agreement made by an instrument in

writing for the sale, gift, exchange, lease or mortgage of any land or interest therein,

shall be valid in favour of a person who is not an agriculturist".

It thus becomes clear that the prohibition against transfer of agricultural lands to a non-agriculturist applies to a "person" entering into such transaction as a transferee. As pointed out hereinabove, Section 2 (n) of the Ordinance contains an inclusive definition of the word "person". An undivided Hindu family is included therein. As pointed out hereinabove, it is an inclusive definition. It is not an exhaustive definition. The question arising therefore would be whether or not a partnership firm is included within the aforesaid definition of "person" contained in Section 2 (n) of the Ordinance.

6. Principles of construction of an inclusive definition are well-settled. A reference deserves to be made to the binding ruling of the Supreme Court in the

case of THE REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION v. HIGH LAND COFFEE WORKS reported in AIR 1992 Supreme Court at page 129. It has been held therein:

"The word 'include' in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include."

It cannot therefore be gainsaid that, when an inclusive definition in a statutory provision is used and it includes only one or two illustrative cases, it can never be said that other cases falling within the inclusive definition are ruled out.

7. A person can be both animate and inanimate. An inanimate person is also often styled as an artificial person. An artificial person is a person consisting of a body corporate. It may have its existence apart from persons constituting such corporate body. It may have its existence in accordance with law. It could be a corporation or a local authority established under a statute. It could be a body incorporated in accordance with the relevant statutory provisions. A company incorporated under the Companies Act, 1956 can be said to be an artificial person. A cooperative society incorporated under the relevant legislation pertaining to Cooperative Societies can also be said to be an artificial person. A statutory corporation established under the relevant legislation can also be said to be an artificial person. Such artificial persons can also be said to be included in the aforesaid definition of "person" contained in Section 2 (n) of the Ordinance.

8. The question then would arise whether or not an unincorporated body of individuals would fall within the purview of the aforesaid inclusive definition of the word "person". It cannot be gainsaid that an undivided Hindu family is a body of individuals and it is unincorporated. It can also be said to be an association of persons belonging to the same family having jointness in estate and residence. That is the accepted connotation of the

term "Undivided Hindu Family". As pointed out hereinabove, it is also an unincorporated body of individuals. It is included in the definition of "person" contained in Section 2 (n) of the Ordinance.

9. That brings me to the case of a partnership firm. It would be quite relevant to look at Section 4 of the Indian Partnership Act, 1932. It defines certain terms like "Partnership", "Partner" and "Firm". Its definition reads:

"4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm".

It thus becomes clear from the aforesaid definition inter alia of "partnership" and of "firm" that it is a compendious term for describing partners who have entered into an agreement to share the profits of a business carried on by all or any of them acting for all. It is certainly not a distinct legal entity. Its recognition as a distinct entity may be for certain specific purposes of filing a suit in accordance with the procedural law contained in the Code of Civil Procedure, 1908 or the Income Tax Act, 1961 or the relevant Sales Tax legislation. For all other general purposes, it has no legal entity. However, it can be styled as a body of individuals or an association of persons who have agreed to share the profits of a business carried on by all or any of them acting for all. A firm can also consist of an undivided Hindu family. It can also have its business in the name of the family. The inclusive definition of "person" contained in Section 2 (n) of the Ordinance should therefore carry within its purview a partnership firm as well along with an undivided Hindu family. To construe it differently will not be in consonance with settled principles of interpretation.

10. The question then arises whether or not a partnership firm having all its members as agriculturists can be said to be a non-agriculturist simply because of its unincorporated character. The answer thereto should be in the negative. As pointed out hereinabove, a partnership firm is a term used compendiously to describe relations of individuals in the context of their share of profits in a business carried on by all or any of them acting for all. Members of a partnership firm can

therefore be said not to be losing their respective individual character. The veil of a corporate body may or need not be torn for mere asking. That principle will not however be applicable in the case of an unincorporated body like a partnership firm. In that case, all partners thereof do not lose their respective individual identity. If they are agriculturists, they have to be recognised as agriculturists even for the purposes of their partnership business in agriculture. If all partners of a partnership firm are agriculturists and are carrying on business in agriculture, the partnership firm can also be said to be an agriculturist for the purposes of Section 54 of the Ordinance.

11. I am fortified in my view by the binding ruling of the Supreme Court in the case of NARAYAN BHIMJI VADANGALE v. HUKUMCHAND CHUNILAL THOLE reported in AIR 1992 Supreme Court at page 503. In that case, the Supreme Court had an occasion to answer whether or not a firm can be an agriculturist inter alia for the purposes of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief). It has been held therein:

" It could not be said that a partnership firm being an inanimate person could not cultivate land personally and cannot therefore be an agriculturist or non-agriculturist. A firm is a name given compendiously to a group of people who comprise its partners, and those people have naturally to be live persons. When we talk of a firm cultivating land we mean to convey that it is the partners of the firm who cultivate the land and in that sense the firm cultivates it personally. The firm may be inanimate but the partners comprising thereof are people in flesh and blood. Whether the firm is agriculturist or non-agriculturist would depend upon the activities of its partners".

The aforesaid dictum of law pronounced by the Apex Court in its aforesaid ruling will be applicable in the instant case. The relevant provisions contained in Section 63 of the Tenancy Act are similar to those contained in Section 54 of the Ordinance as set out hereinabove. In that view of the matter, what applies to Section 63 of the Tenancy Act in the context of the relevant provisions contained therein would apply with equal force to the relevant provisions contained in Section 54 of the Ordinance as reproduced hereinabove.

12. In the present case, the admitted position on record is that all partners of the partnership firm in the name and style of petitioner No.1 are agriculturists. It transpires from the material on record that they purchased the land in the name of petitioner No.1 herein for the purpose of carrying on their business in agriculture. In that view of the matter, the firm in the name and style of petitioner No.1 can be said to be an agriculturist. In that view of the matter, the sale transaction in question can be said to be in favour of an agriculturist and it could not be said to be in contravention of Section 54 of the Ordinance.

13. Since I have decided the case on merits, I have not thought it fit to deal with the contentions raised before me by learned Advocate Shri Raval for the petitioners to the effect that the proceedings were without jurisdiction as the show cause notice in the present case was issued on 8th July 1983, nearly 15 years after the date of the transaction entered into between the parties some time on 22nd August 1967 and the necessary mutation entry in the revenue record qua the disputed land was certified soon thereafter.

14. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-D to this petition as affirmed in appeal by the appellate order at Annexure-E to this petition as further affirmed in revision by the order at Annexure-F to this petition cannot be sustained in law. It has to be quashed and set aside.

15. In the result, this petition is accepted. The order passed by the Assistant Collector at Dhrangadhra on 3rd September 1983 at Annexure-D to this petition as affirmed in appeal by the appellate order passed by the Collector of Surendranagar on 24th April 1994 at Annexure-E to this petition as further affirmed in revision by the order passed by and on behalf of the State Government on 31st December 1994 at Annexure-F to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.

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